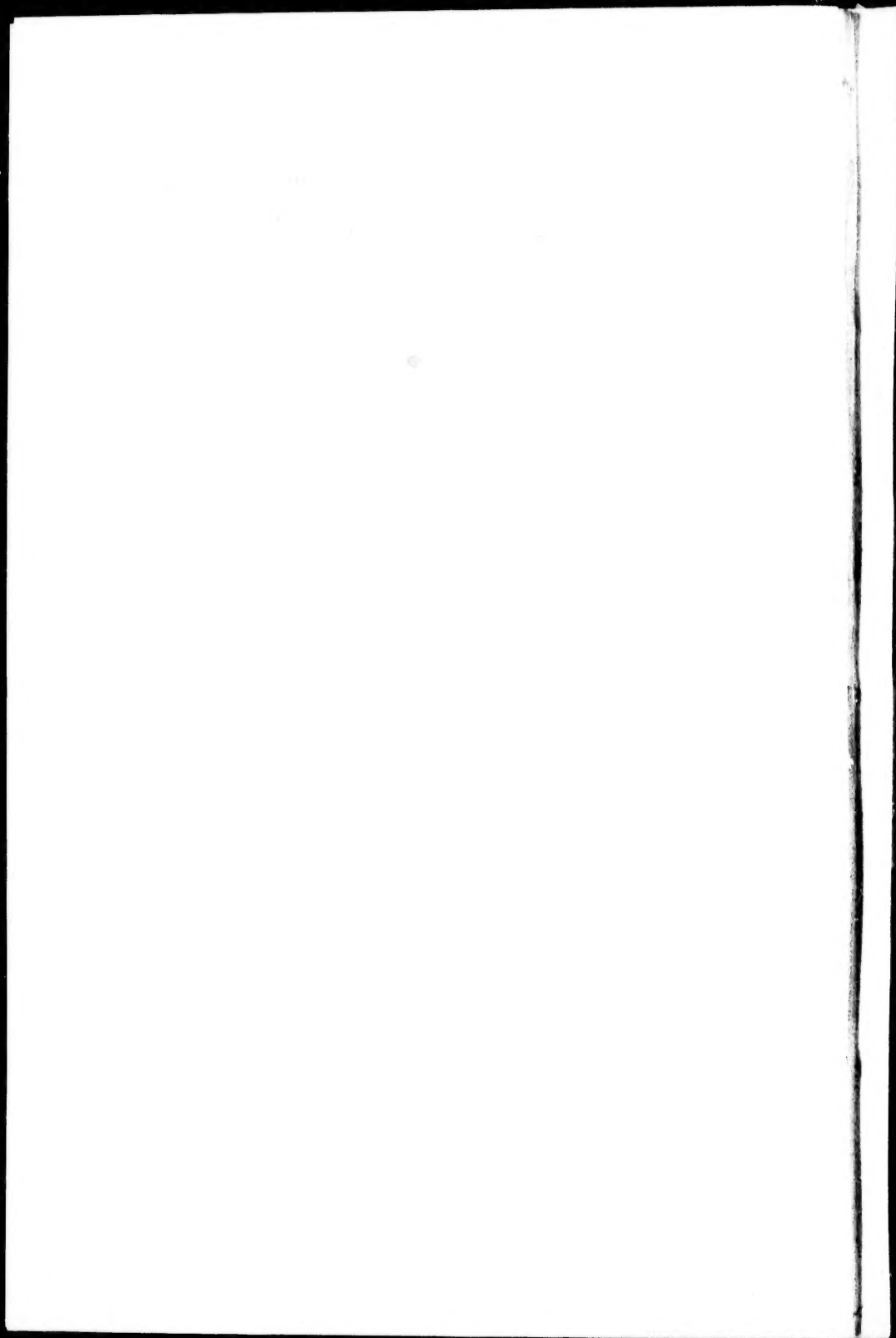




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HOUSE OF ASSEMBLY

UPPER CANADA.

DECEMBER 5th, 1825.

THE House having resolved itself into a Committee upon the Bill sent down from the Legislative Council, for conferring Civil Rights on certain Inhabitants of this Province, (Mr. Walker in the Chair.) The ATTORNEY GENERAL spoke, in substance, as follows :—

THE ATTORNEY GENERAL rose and said, the matter now before the Committee is one which excites evidently much interest in the several members of the House; and occasion has been taken more than once, in the discussion of other measures, to allude to this as one which has created a very lively sensation in the country. Upon what ground this is imagined I am not myself aware, but I am happy that we are at length about to discuss the bill before the committee fully, and I hope dispassionately, for it is by such a discussion, more than by any other means, that any false impressions which may have gone abroad upon the subject, will be the most surely and completely counteracted. It is, Sir, a most happy consequence of the excellent constitution we enjoy, that if, at any time, the public mind is agitated by apprehensions well or ill founded, an opportunity is afforded here for discussing the grounds of such apprehensions openly and fully ;

and indeed it is scarcely possible to conceive that a question can arise affecting the interests, or even the feelings, of the people, or of any considerable portion of them, which cannot, in some shape or other, be properly made the subject of examination in this Assembly. Many, no doubt of my honourable and learned friends, and indeed most of the members of this House, will desire, I dare say, to express their sentiments fully in the course of this discussion, and I wish, therefore, that I could forbear trespassing for so long a time upon the patience and attention of the committee as I fear I must do, in order to bring the matter, and every consideration fairly connected with it, plainly in view. It shall be my endeavour, however, to avoid every thing that can tend to obscure or embarrass the question, and waiving every topic that can occasion unpleasant feeling in any quarter, to place before the committee the points which they will be called upon to determine.

We are all aware that the unhappy dissensions which arose between Great Britain and her North American Colonies, when they broke out into open acts of violence in the year 1775, had necessarily the effect of dividing the great mass of the people of those colonies, during the remainder of the contest, into two classes, namely, those who preserved their allegiance and adhered to the crown, and those who forfeited their allegiance and joined the standard of revolt. At the conclusion of the contest, in the year 1783, by the treaty which was made, under the sanction of a British act of parliament previously passed for

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that express purpose, and which was virtually, at least, confirmed, as I shall presently shew, by several statutes subsequently passed, the thirteen colonies were declared to be free, sovereign and independent states, and His Majesty entirely renounced all dominion and control over them. In order to determine how this result of the contest affected the political character and relations of the people of those states, which were thus acknowledged free and independent, it is not immaterial to consider the avowed objects with which that contest was begun. The terms of the declaration of independence are sufficiently in the recollection of honourable members to make it unnecessary to quote the precise words; alter a recital of their alleged wrongs, and the various reasons which made a separation justifiable and necessary, the Congress declared, "that the united colonies were to be thenceforth free and independent states; that they were absolved from all allegiance to the British crown; that all political connexion between them and Great Britain was, and ought to be, dissolved; and that they would thenceforth hold the people of Great Britain, as they held the rest of mankind,—*enemies in war, in peace friends.*"

When peace was concluded, most of those who had been actually engaged on the side of the British crown, sought an asylum in some one of those portions of America which continued under His Majesty's dominion. The feelings engendered by the contest rendered their longer residence in the United States disagreeable at least; and many even who had not rendered themselves

obnoxious to the new government by any active service during the war, but who were nevertheless attached in their hearts to the royal cause, rather than continue there as subjects of the republic, forsook their property, and removed to some country, where they could still enjoy the form of government which they preferred, and to which they had sworn allegiance. Numbers removed to Nova Scotia and New Brunswick, and many, at a period somewhat later, came into this province, where they received from a generous government some indemnification for their services, and for the property they had left.

At the conclusion of the peace, however, and for a short time afterwards, this province contained scarcely an inhabitant, except the military, who were stationed in it; and the first settlements that succeeded consisted of the disbanded soldiers of several British and provincial corps which were distributed along the Saint Lawrence, and in the district of Niagara, and of a very considerable number of emigrants from Scotland, who settled in the Eastern district, principally in the county of Glengary.

Strong inducements were held out to American loyalists to resort to this province; lands were given to them gratuitously, and those native Americans who had adhered to the royal cause, or, as it was called, to the "unity of the empire," were distinguished by the name of U. E. loyalists, and they and their children received free grants of land from the crown. These did not, as may naturally be supposed, all remove at once into this

province; various circumstances occasioned many to remain in the United States long after the peace, and it was at length thought necessary by the government to issue a proclamation, requiring all such claimants upon the royal bounty, to present themselves here before the year 1798, which was no less than 15 years after the peace. All persons of this description, however, it is clear, whenever they did present themselves, were entitled, beyond question, to be regarded as British subjects. They could not, upon any principle of law or reason, be considered as having forfeited their allegiance, and lost their consequent rights, by the establishment of American independence, which they had openly, and by all means in their power, resisted at the hazard of their lives, because upon the same principle, General Simcoe himself, or any British officer or soldier who served throughout the contest, might as well have been considered to have been deprived of his civil rights, by merely removing into that country after the peace. But it was not very likely that emigration from the United States to this province, which borders upon it through so long a line of frontier, would be confined entirely to such persons as could prove their loyalty to our government during the rebellion, or to such, indeed, as had in truth adhered to it. On the contrary, there is no doubt that the inducements of family connexions, and the means of speculation and facility of settlement, which a new country like this presented, attracted many to this province, who were by no means of that description, but who were, many of them probably, indifferent, at least, as to what form of government they lived under.

The first governor of this colony was General Simcoe, a man whose name should never be mentioned in this country but with respect, not only for the gallant and conspicuous part which he had borne in the late contest, but for his liberality of feeling and of conduct, and for his enlarged and correct views of the situation and future resources and value of this province. It is said, Sir, I know by some, that he did indeed carry his liberality so far that he encouraged & invited all persons to resort to Upper Canada from the United States of America, whatever had been their conduct during the revolution; nay, that he knowingly received, and conferred lands upon several who had been notoriously in arms against their sovereign. I have been told, too, that he even issued a proclamation, inviting all citizens of the United States, without regard to loyalty or political character, to become settlers in Upper Canada.

With reference to the first assertion in the full extent to which I have heard it advanced, I will only declare, that, unable of course to speak from memory, or personal knowledge of General Simcoe's private sentiments and conduct, and having no other certain means to judge of them but by his public acts, I cannot, and do not believe, that immediately upon the conclusion of so disastrous a contest, it was his deliberate policy to invite to this infant colony, which had been made the place of refuge for the suffering loyalists, men just reeking from rebellion against their sovereign, and to place them by the side of those on whom the king's bounty had been so humanely and properly bestowed.

With reference to the second assertion, which regards his public and official acts, of which all can judge, I will at present only say, that no proclamation of General Simcoe's containing any such invitation, has ever been shewn to me; but, on the contrary, I have seen a proclamation of General Simcoe's which expressly declared, that the intention was to give lands to those who "could prove their loyalty and good conduct, and who were, on that ground, fit objects of His Majesty's bounty."

While I state this, Sir, I do not mean to express a doubt that many persons may have been admitted into this province from the United States both during General Simcoe's administration and since, without any very rigorous inquiry into their political character, and that some may have inadvertently received lands who had been openly hostile to the British cause; neither would I venture to affirm confidently, that General Simcoe (although I find no public act of his to support that opinion) may not privately have thought it a prudent and warrantable policy to open the door very freely to American citizens in the belief that such of them as were at first indifferent to our government, would become in time attached to it, and would form a useful and contented population.

The more important inquiry is, if we admit all this, what is the consequence, as it respects the civil rights of those who, under such circumstances, have become inhabitants of this province? In my judgment, Sir, all the arguments that can be

founded upon the supposed indiscriminate invitations of General Simcoe—carried to their utmost length—the admission, even, of such a proclamation as I have spoken of, could go no further than this. They would establish, and I think satisfactorily establish, that the persons so invited have the strongest and most equitable claim upon His Majesty's government at the present day to set at rest all questions as to their political rights, by conferring upon them every privilege of subjects; for certainly, if so invited, they had a right to expect it, and it would have been neither honorable nor just, if the government had, at this late day, shown an indifference to their case, and forbore to take every proper measure for their relief.—But all reasoning founded upon this alleged invitation, must be manifestly insufficient as applied to the legal question, whether this portion of our inhabitants *now* have those rights?—It may be, and is, strong reasoning to shew that they have a claim to expect them; and if that by law they now have them not, they *ought* by law to be conferred upon them; but it cannot have weight in deciding the important but strictly legal question, whether that portion of our people, respectable both in number and in character, *are* at this moment entitled to all the right of British subjects. It is that question, however, which we are now to consider. If they are subjects, they require not the bill now before the committee for their relief. If they are not, we must then consider whether the bill before us does or does not offer the desired remedy. For bearing to enter yet into that question, I will observe, that while those citizens of the United States who removed into this province, were still

in their own country, & before they crossed the line which separated them from the British dominions, they must have been either aliens or British subjects. If any of them were aliens, they could only, like other aliens, become entitled to all the rights of British subjects, under some positive legislative enactment. No proclamation of a governor is a sufficient assurance for them to rest upon. It could not make law—it could no more make an alien a subject than it could deprive a subject of his civil rights, and make him an alien.

With respect to the statutes applying to this question the British act of 30 Geo. 3, cap. 27, has been much spoken of in former discussions of this question, and its provisions require our particular consideration. This act, it has been stated, was passed in order to carry into effect the intentions ascribed to General Simcoe of attracting American citizens to the province; and it has been spoken of as evincing the sense of the British parliament that all the people of the United States were in truth British subjects, and might, by merely coming into Upper Canada, claim every privilege belonging to that character. I have looked over the debates of the session in which that statute was passed, in the hope of finding some exposition of its object, but it is remarkable that not a syllable can be found respecting it; there is not even a fragment of a debate upon it, nor any notice of its progress through its various stages. It seems to have excited no particular interest, or to have been thought of much importance; for even General Simcoe, who usually took a prominent share in discussions respecting America, does not ap-

pear to have spoken upon it. We are, therefore necessarily left to gather its intention from the provisions it contains, and certainly these shew it to be any thing but an act of naturalization. Nothing is said as to the rights those persons should enjoy who became settlers under it; and so far as inference goes, the whole tenor of the statute shews that, in the opinion of the parliament which passed it, American citizens were not regarded as British subjects. It required from them an oath of allegiance on their arrival in the province, an oath as to their intention to reside and settle; and the very language of the statute draws an evident distinction between them and the subjects of Great Britain, for it expressly declares that they shall import their goods only in BRITISH SHIPS, manned by BRITISH SUBJECTS, and navigated by BRITISH SUBJECTS. It is clear that they could not, under this statute, have brought their goods over in ships owned or navigated either by themselves or by their fellow citizens of the United States.

But in truth this statute is no where regarded as a statute for naturalizing the persons upon whom it confers the single privilege of importing their goods to a certain amount duty free. It is not classed in any book or treatise upon the subject of aliens, among the statutes of naturalization; and indeed I never heard it relied on as such in the former discussions upon this question; but on the contrary, I have heard that idea disclaimed, and the rights of those who have removed from the United States rested fairly and expressly upon the common law doctrine of alle-

giance accruing by birth, & remaining necessarily unalienable through every change of circumstance. But if it were otherwise, if the 30th of Geo. 3d could be safely considered as a naturalizing statute, and if construction and inference merely could be relied on for conferring the rights of subjects, it is still to be recollected, that of all the Americans who are now in this country, but a very trifling number can be said to have come in under its provisions. It is notorious that not one in a thousand took advantage of the permission it afforded, or came in with a consciousness of its existence. Perhaps not a dozen licences have issued under it, and scarcely a single individual has taken the oaths it requires, in the manner it prescribes.

The statute next in order which affects this question, is a provincial act of our own, passed, I think, in the year 1795, and repealed by later acts, which, however, have in substance continued its provisions. This particular statute, not being printed at large in our revised edition of the statutes, I cannot now lay my hand upon it, but I have a general recollection of its object and provisions. It was passed after General Simcoe's administration, and the preamble in substance declares the expectation of the legislature that many natural born British subjects, residing in foreign countries, might be induced to remove into this province; and it seems to have been thought prudent to guard the legislature against the danger of foreign influence, by excluding such British subjects as had sworn allegiance to a foreign country from sitting in the assembly, or voting at elections,

until they had resided continually for seven years in this province. This is the single object of this and the subsequent provincial acts on this subject. They are evidently disqualifying statutes, not statutes for conferring rights on those who did not before possess them. On the contrary, their whole operation is in express terms confined to subjects, and they restrain the exercise of a particular right of subjects under certain circumstances. To those, therefore, who are not entitled to be regarded in law as British subjects, independently of these statutes, no provision in these statutes can apply. They do not affect to confer any right or privilege, and cannot have been intended as acts of naturalization in any sense, for if so, they would have been in direct violation of the general royal instructions which are laid before us for our guidance, and which would have prevented the passing any such act of naturalization, without an express and special instruction, such as is recited in the bill before us, having been graciously communicated by His Majesty to the government of this province.

Indeed the manner in which these statutes have been constantly acted upon, shew plainly enough the general conviction of the object they were intended to answer; for it is well known to all of us, that at every election, persons born in any and every part of the united kingdom, and beyond all question British subjects, have been rejected, under these acts, at the hustings, because they had resided some time in the United States, or sworn allegiance to their government, and had not since been inhabitants of this pro-

vince for seven years.—But it is scarcely necessary to consider these statutes further, for they evidently leave the question of who are, and who are not, British subjects wholly untouched. Forbearing, therefore, all further argument as to their legal effect, I will observe, that up to the year 1812, when the last war commenced, many thousands had removed to this province from the United States of America, and some of the most extensive and best cultivated settlements in Upper Canada are composed almost entirely of persons of that description. In this district particularly, and in the districts of Newcastle and London, a large portion of the country is inhabited by persons who were formerly American citizens, and who, whether they were invited or not, were certainly freely admitted, and either obtained grants of land from the government, or purchased lands from individuals, which they have hitherto held without interruption, and have exercised every civil right of subjects as fully as any other portion of the people. Of the persons who had thus transferred themselves to this province, the earliest settlers had doubtless been born before the year 1783, and while the colonies of which they were natives were part of the dominions of England, but before the year 1812 a very great number must also have removed who were born in the United States since the treaty of 1783 confirming their independence, and who differed from the former in this respect, that they were born in a foreign country. But in truth between them and others no distinction was made or thought of. All were treated equally as subjects, and we dealt with them as such without reserve. It was the

war which first necessarily called attention to their situation as distinct from other classes of the population. The country which many of them had very recently left, was now in open hostility against us, and General Brock, the governor at that day, having his attention necessarily called by that event to the political condition of the various descriptions of Americans in the province, seemed to have been impressed with the perfect conviction, that there were many among them who could only be conceived to owe, like other foreigners, a temporary allegiance to our government, so long as they resided in it, and whom it would therefore be unjust to compel to serve against their countrymen, who were now become our enemies; he issued a proclamation allowing all who choose to withdraw from the province into the United States, and a number availed themselves of this permission.

Now, nothing is more evident than that if the mere removing into this province had constituted all these persons natural born subjects, or rather intitled them to be legally so regarded, (and it is only upon this ground that the claim of a great proportion of settlers from the United States can be said to rest,) they must, like other natural born subjects, have owed a perpetual and absolute allegiance from which the government could not have suffered them to withdraw. Upon the events of the war I need not dwell; these are sufficiently impressed upon the recollection of us all; and I am happy upon this, as upon every other occasion, to bear testimony to the loyalty and good conduct of a very great portion of those people who had emigrated from the United States.

It is this evidence of their general disposition which has doubtless made His Majesty's government here and in England, equally desirous that all apprehensions and difficulties as to their civil rights, should be removed, and that they should henceforward be assured of finding their situation, in all respects, the same as if they had been born in the province, or had come from any part of His Majesty's dominions.

It cannot, however, be a matter of surprise, that after the war had ceased, the principal object of which seemed to be to wrest this colony from the empire, it appeared desirable to the mother country to restrain hereafter the indiscriminate admission of American citizens.

With this view, as it must be well known to many members of the committee, an express injunction was transmitted in 1815, to Sir Gordon Drummond, not to admit American citizens settlers. Upon the policy or impolicy of this, it is needless on this occasion to enter into any discussion, but it is certainly very clear, that if it can be true, as was formerly contended, that those Americans who were born before the year 1783 must, by reason of their birth in the British dominions, continue natural born British subjects to the day of their death, and that the children and grand children of such parents must, under the statutes of Anne, and the subsequent statutes for naturalizing the children and grandchildren of subjects, though born in foreign countries, be also entitled to all the rights of natural born British subjects, no such order could have been legally given or enforced,

for I know of no law that would authorise the King to prohibit his natural born subjects from entering, at their pleasure, into every part of his dominions and purchasing land and assuming every right that belongs to the character of subjects.— Lieutenant Governor Gore, when he succeeded Sir Gordon Drummond, found the instruction which I have spoken of, and, so far as it was in his power, enforced a compliance with it. The consequences which followed are known to all of us. The assembly in 1817 questioned, or rather denied, the power of the government to prevent the admission of Americans as settlers, not indeed on the ground that they were ipso facto subjects, but upon the ground, that under the 30 Geo. 3. chap. 27, they were entitled to be admitted, and that being so admitted, if they complied with the provisions of that statute and also of the statute of 13 Geo. 2d for naturalizing foreign protestants in his Majesty's colonies or plantations, they became British Subjects.

The resolutions passed upon this occasion and other resolutions upon different subjects seem to have been regarded by Governor Gore as a direct opposition to the declared sense of the King's government, or so exceptionable upon other grounds, that they led to an abrupt prorogation of the Legislature, and the resolutions which were passed were therefore not further acted upon; but as they serve to shew the opinion which the representatives of the people then entertained upon the subject we are now considering, I will read them to the committee. (Here the Attorney General read the resolutions, which are as follows.)

1. "*Resolved*—That an act was passed in the
" 13 Geo. 2d. for naturalizing Foreign Protestants,
" in His Majesty's Colonies and Plantations."

2. "*Resolved*—That an act was passed in the
" 30th year of His Majesty's reign, entitled, " An
" Act for encouraging new settlers in His Majes-
" ty's Colonies in America."

3. "*Resolved*—That the said acts were enact-
" ed for the express purpose of facilitating and
" encouraging the settlements in His Majesty's
" American dominions."

4. "*Resolved*—That the said acts are still in
" force, and that subjects of the United States, may
" lawfully come into, and settle in this Province,
" hold lands, and be entitled to all the privileges
" and immunities of natural born subjects herein,
" on complying with the several formalities requi-
" red by the said acts."

The subsequent resolutions related to the policy of excluding American citizens; but they were not put, owing to the abrupt termination of the session. Those which were adopted and which I have just read are material to be considered in tracing, as I am now doing, the progress of the discussion of the question at present before us, because they speak the sentiments of the representatives of the people of that day; and we find the opinion openly expressed by them, that such citizens of the United States as had availed themselves of the provisions of 30th Geo. 3, and had removed into this Province, could only be en-

titled to the rights of British Subjects in complying with the provisions of that act, and of the 13 Geo. 2d. for naturalizing foreign Protestants in His Majesty's Colonies and Plantations. Had they in the opinion of the assembly in 1817, been actually British subjects, the 13 Geo. 2. could not have applied to them, and a compliance with the formalities required by it, could not have been necessary to give them the rights of subjects.

I will now read, Sir, to the Committee the preamble and the principal provisions of the 13 Geo. 2d. to which the assembly alluded in their resolutions. [Here the Atty. General read and commented upon the Statute.] By this Statute Sir, the committee will perceive that those who were born out of His Majesty's dominions, and who might, by a strict observance of all its provisions, have become naturalized subjects, must first have taken the oath of allegiance, and made and subscribed certain declarations intended to secure the Protestant succession, and also a profession of their christian belief—all of which is required to be done in open Court, within certain hours, before the Chief Judge of the colony, and a record of it is to be duly made, and preserved. They must also within a certain period have taken the sacraments, and they must have resided continually in the Province for 7 years, without having been absent more than two months at any one time. It is very evident, Sir, that this Statute was in fact passed with a view to a very different state of things; that it was intended to encourage protestant emigrants from Europe to settle in those British Colonies, which are now the United States; and that there being

now no longer an apprehension of any bad consequences in the colonies from a Roman Catholic ascendancy, those provisions which relate to the taking the sacrament, might, with some other provisions in the act, be better dispensed with—and, in truth, the Statute is but ill adapted to suit the case of Emigrants, removing from the United States into this Province. Still, Sir, it is very certain that there has not been, and is not now, any other act in force, for naturalizing persons in the Colonies, if we except, indeed, the Statute naturalizing persons who have served in certain foreign corps particularly specified—the Statute naturalizing persons employed for a certain time in the Greenland Whale Fisheries, and one or two other partial and limited provisions of that nature, which it is quite immaterial to consider at present. So that either all American citizens now in this Province, are, contrary to this opinion of the assembly, British subjects without the aid of any naturalizing act, or, if they are not, they must, as the resolution states, comply with the formalities of this Statute before they can become so. But, Sir, I believe I neither overstate the thing, nor do I speak too positively, when I venture to express my entire conviction, that of the thousands of persons of all descriptions, classes, and ages who have come to this Province from the United States of America, not one individual has ever yet complied with the formalities required by the 13 Geo 2d.—Since there have been discussions upon this question of late years in our assembly, one or two respectable persons from the United States, have asked me what steps they were to take, in order to become naturalized; I have referred them to this

Statute, but I do not know that they have ever gone through the ceremonies it requires; and, indeed, I am persuaded, that the records of our superior Court, will not exhibit an entry of a single name—And, while on this subject, Sir, I will remark, that in that provision of the Statute, which requires a personal appearance before the Chief Judge of the Colony in open Court, and the taking certain oaths there in order to become naturalized, there is nothing very extraordinary or unreasonable, for in truth, it is the very form required to be gone through in the United States at the present day. I have myself seen it in the State of New York, and it is perfectly well known that none of us could be admitted to the rights of citizenship in the United States, until we had complied with it. I believe too Sir, that there is even a discretionary power in the United States, to withhold the rights of citizenship, after the required period of residence, upon good cause; and I mention this only to shew, that in the country from whence the American portion of our population has come, there is a jealousy and a precaution used in admitting the subjects of other governments to civil rights. With respect, however, to *all* Americans who are now actually resident in this Province, we are assured by His Excellency's message and by the dispatch transmitted to us, that the government desires to secure them in the enjoyment of every right and every privilege without distinction, except such as we have ourselves made. We are told that in the opinion of His Majesty's Government, this may properly be done, and that it is deemed expedient to do so.

But Sir, to return to the resolutions of 1817, which have occasioned my reference to the British naturalization act. The objections raised by the assembly to the acts of the Executive Government, in ceasing to act upon the 30 Geo. 3d cap. 27, occasioned a reference to the King's government. Lieutenant Governor Gore, in order to comply strictly with the order which had been sent to his predecessor, Sir Gordon Drummond, to restrain settlers from the United States from resorting to this province after the war, conceived that he was warranted in refusing to administer to such settlers the oaths rendered necessary by that act. The assembly, on the contrary, contended, that there was no such discretion.

An hon. member has alluded in debate to the decision of his Majesty's government, in 1817, upon this reference, and, since it has been spoken of, I will state to the committee what I have no doubt is perfectly well known to many hon. members, that the King's government in England, expressly declared that the assembly was right in supposing that persons coming in under the 30 Geo. 3, could claim to have the oaths mentioned in that act, administered to them, and that, on the other hand, it was equally clear that the mere coming into the province and taking those oaths, conferred no right to hold lands; that the 13 Geo 2 was still in force, and that it was only by the fulfilment of its provisions that such persons could entitle themselves to hold lands and to be considered as natural born British subjects.

After the year 1817, Sir, I am not aware that for several years any circumstance arose to call

public attention to the situation of American settlers in this province, with regard to their civil rights. The measures which had been previously taken, seemed to have checked emigration from the United States, in a great measure, but the assembly, I believe, did not recur to the subject; and I do not remember that it engaged the public mind in any manner until the year 1822. when, as we all know, the question of the political rights of Americans in this province, was necessarily brought fully into discussion in the assembly, upon a petition against the return of a member for the counties of Lenox and Addington. The objection urged by the petitioners against the return of the sitting member, was that he was an alien, and, as such, disqualified to sit in the house of assembly of this province. There were indeed other grounds of objection stated, but they were distinct from the present question, and have no reference to the subject before the committee.

It was proved by evidence at the Bar, that the member petitioned against, was born in one of the present United States of America, before the treaty of 1783, and while it was part of the British dominions, that he resided in that country, during the whole period of the revolution, in which, from his tender age, or other cause, he took no active part: that after the treaty of 1783, he had remained in the United States, had sworn allegiance to their government, and abjured, on oath, all allegiance for ever to the Crown of Great Britain; that he had held offices of great trust, and confidence in the United States, until the year 1809 or 1810, when he removed to this province, where he had

since resided without, as it appeared, having complied with the provisions of any British statute, under which he could have been naturalized. Upon these facts, it was evident, that the member so returned, was neither a "*subject naturalized by any act of the British Parliament*," nor a subject, "having become such by the conquest and cession of Canada," (which latter designation could, of course, only apply to the French Canadians inhabiting Canada at the time of its conquest) and the sole question, therefore, was, whether he came within the only other description of British subjects mentioned in the 31 Geo. 3. cap. 31, as eligible to the assembly: namely, "*a natural born subject of His Majesty*."

The question was fully discussed, and it was decided by a large majority of the house, that the sitting member was entitled to be regarded at the time of his election, a natural born subject of Great Britain. It was said that no solemn judicial decision to the contrary, had ever been made in England, and that, according to the common law doctrine of allegiance, the sitting member having been born in a country then under the British dominion, could by no act, or choice of his own, divest himself of his allegiance, and could not be deprived of his rights as a British subject, which had accrued by birth, but must continue to be a subject till his death, notwithstanding the change in the political relations between Great Britain and the United States.

Many members of the assembly, Sir, however, were of a different opinion, and among them, I be-

lieve, every gentleman belonging to the profession except one. Being then a member of the assembly, it became my duty in common with others, to declare my opinion upon oath, and I did so, and stated very fully the reasons on which I had formed it, and which certainly I entertained with as sincere a conviction of their correctness as could have been felt by those whose judgment led them to a different conclusion. Those who like myself considered the sitting member ineligible, were of opinion, that although born a British subject, he was not a "natural born *British subject, at the time of his election,*" which they conceived was intended, and required by the expression used in the 31st of the late King. They thought that the revolt of the 13 Colonies and the acknowledgment of their Independence by treaty made under the express sanction of an act of Parliament, and recognized by several subsequent statutes, had the effect of absolving from their allegiance all such native Americans as became citizens and subjects of the new government—that the best authorities laid down the doctrine, that the supreme power of a state, or, in other words, the Parliament, concurring with the consent of the individual, could dissolve the tie of allegiance with all its relative rights and duties—that the individual, in this instance, had by the most open and unequivocal acts, declared his election to be a subject of the new Republic by abjuring his former government; and that he became as effectually an Alien, with respect to Great Britain, as if he were the subject of any foreign power in Europe—that being an Alien, he could only be naturalized for the purposes mentioned in the 31st of the King, by an act of the British Parlia-

ment; but that he did not claim or pretend to have been so naturalized; but, on the contrary, maintained that the circumstance of his birth alone entitled him upon the principles of the common law of England, to be regarded as a British subject without the aid of any naturalizing act. I will not, Sir, detain the house with an account of the authorities then brought forward from treaties, & British acts of Parliament, to confirm the view taken of the question by the minority of the house upon the occasion I am speaking of, because they are all stated and adverted to in a solemn and recent decision of the highest authority, which I shall presently read to the committee; but I will just remark that, although there did not appear then to have been any judicial decision expressly upon the principal point, there was nevertheless, a current of very respectable authorities that confirmed me, at least, in the conviction I came to. Mr. Woodeson in his lectures on the laws of England, in treating on the doctrine of allegiance, illustrates the position, that the tie of allegiance *may* be dissolved, by an express reference to the inhabitants of the revolted colonies in America; and the learned Editor (Sir Henry Gwilliam) of Bacon's Abridgment, a work of good authority in the profession, under the title "Alien" adopts the same opinion, and considers, that the citizens of the U. States have become Aliens to Great Britain "since the acknowledgment of their independent commonwealth."—Besides these, opinions had been given by eminent lawyers upon the rights of Americans, as it respected trade and navigation; and, tho' no decision of a court in England could be produced, there had been much discussion upon the

subject, as a constitutional question, and opinions of individuals had been advanced on both sides.

The discussions which took place in our Assembly in the case I have alluded to, excited necessarily considerable interest from their nature and importance: but I do not think, that any very lively public sensation was occasioned by them; or that they gave rise to any degree of uneasiness among the people of the province. Indeed, there neither was nor could be occasion for any such uneasiness.

In the following year, 1823, the same or rather a similar question arose in the Assembly. The Returning Officer at a new election for the same counties of Lenox and Addington, refused to receive votes for the son of the former sitting member, on the ground that he was disqualified as an Alien.—He, Sir, had been born in the United States, after their independence, and, therefore, in a foreign Country, and had removed with his father into this Province, but had not, any more than his father been naturalized, if it were necessary, by complying with the provisions of any act of Parliament. I was not in the Province during the Session of the Legislature in which this question was agitated, and shall, therefore, say nothing more upon it, as I really do not know precisely upon what grounds it was decided.

It is worthy of remark, however, that in the same session (1823) the Assembly, whose attention had been called, by the recent discussions, to the situation of the numerous and respectable portion of

our population, who had emigrated from the United States, concurred in a series of resolutions upon the subject, evidently with the desire of obtaining some enactment that might quiet all apprehensions respecting the civil rights of those persons, and secure to them the full enjoyment of them. Our own Journals for that session being destroyed by fire, & having been absent from the province myself at that period, I have had recourse to the Journals of the Legislative Council, to whom they were communicated by the Assembly with a request for their concurrence; and I have procured a copy of them, which I will now read to the committee. [Here the Atty General read the resolutions which are as follows.]

“Resolved. That by the laws now in force in “this province, all foreign Protestants are admissible to become settlers therein, on conforming to “the provisions contained in the said laws, and “that on having done so, they may hold lands and “enjoy all the privileges and immunities of natural “born subjects within the Province.”

“Resolved, That from ignorance of the law, “and unavoidable difficulties, many inhabitants of “the province, otherwise qualified, have rejected “or been unable to qualify themselves according “to law, by which means they can not legally “exercise or enjoy the rights of subjects within “the same.”

“Resolved, That some legislative provision is “absolutely necessary for quieting the minds of all “such persons, and securing to them the enjoy-

"ment of their rights and properties as His Majesty's subjects."

"*Resolved*, That this provision can only be made by the Imperial Parliament."

That these resolutions had reference principally, or rather entirely, to those inhabitants of this province who had emigrated from the United States of America, there can be no doubt, and, indeed, that fact must be perfectly well known to many members of this committee, who were at that time also members of the assembly.

The situation of the comparatively trifling number of settlers who had been born in other foreign countries, had never engaged the attention of the assembly, or been the subject of discussion upon any former occasion. So that it is plain, Sir, that the assembly of this province, in the year 1823 as well as in 1817, notwithstanding the decision of the particular case upon the return of a member for the counties of Lenox and Addington which I have spoken of, were decidedly of the opinion, that there were many Americans in this province who required a legislative enactment to confer upon them those civil rights, which could only, in their opinion, have been otherwise acquired by the exact observance on the part of those persons, of the provisions contained in the British Statute for naturalizing foreigners.

No address was grounded on these resolutions, for a reason which I believe was communicated by the Legislative Council at a conference, and which I have understood to be, that the council

were aware that the government of this province had already called the attention of His Majesty's government to the subject, and entertained the hope that an act would be passed by the Imperial Parliament, which would remove every ground of apprehension.

I refer to them, therefore, for no other purpose than to shew the impression entertained in the assembly as to the necessity of legislative interference. The application to the King's Government, from whatever cause, appears not to have been effectual; and, indeed, it is not improbable that the government may have awaited the decision of the case to which I have alluded, which was then pending in England, and which is referred to in the dispatch of Earl Bathurst communicated by His Excellency to this House. The committee will understand that I refer to the case of Thomas and wife against Aclam, which was decided in England in 1821, and which, from the interest which it naturally excited in these provinces and in the United States, was published in most of the News-papers at that time.

Fortunately, Sir, by this decision of the highest legal authority in the Courts of the mother country, this great constitutional question is at length set at rest, and it is now no longer doubtful what must and will be the Judgment of the courts of law here whenever the same question shall arise. Although I feel but too sensibly, that I must have appeared tedious in some parts of the statement which I have felt it necessary to make to the committee on this interesting subject, I am sure, Sir, I

shall not be thought to take up their time unprofitably in reading to them at length, the unanimous judgment pronounced by the Court of King's Bench in England, upon those very points which have, on former occasions, given rise to so much discussion in this Province.

The case arose upon the trial of an ejectment brought by one Thomas and his wife, to recover possession of certain real estate in Kingston-upon-Hull, in the county of York, claimed by the wife as heir at law to the person last seized; and it was found by the Jury that the Plaintiffs were entitled to recover. Frances Mary Thomas, the wife, having proved herself the next heir to the person who died seized, *provided that the said Frances Mary Thomas could by law inherit the said tenements.* The facts of the case were all specially found, and returned by the Jury in the shape of a special verdict. It is stated that one Peter Harrison, the Uncle of Elizabeth Harrison, (who had recently died at Kingston-upon-hull, seized of the estate in question,) and the grand-father of Frances Mary Thomas, the present claimant, was a native of England, and had emigrated to New Haven, in the state of Connecticut, then a British Colony, where he was appointed Collector of His Majesty's Customs, and continued in that office till his death in the year 1775: that he left several children surviving him all of whom died without issue, except one daughter, Elizabeth; that this daughter Elizabeth, on the 22 Oct. 1781, was married to one J. Ludlow, who was born in the state of New York, then one of the British Colonies, and was brought up to the profession of the law, that Elizabeth Ludlow died

in the year 1790 in the United States of America, leaving an only daughter Frances Mary, now Frances Mary Thomas, the present claimant.

The special verdict then proceeded to state, that the said Frances Mary, was born on the 4th February 1734, at Newport, in the State of Rhode Island, in the United States of America after the said United States had been recognized as free, sovereign and independent States, and was married at New York, in the said United States of America in the year 1807, to the said P. Thomas; that on the 4th day of July 1776, the said states of Connecticut, Rhode Island, and New York, with other Colonies in North America, declared themselves free and independent states, and separated themselves from the Crown of Great Britain; that on the 3d day of September 1783, His late Majesty acknowledged the independence of those states by treaty—and the heads of the treaty are all set out at length upon record.

The question of law, which, upon this special verdict, was left to be decided by the Court of King's Bench, was, whether, under those circumstances, Frances Mary Thomas could inherit lands in England.

The case was argued elaborately at the bar, as appears by the report of it published in the reports of the King's Bench for that period, which I have in my hand, and I cannot forbear remarking, that the learned Counsel who supported the side of the American claimant, seems to have argued the case much more at length than the Counsel

upon the other side, and to have resorted to every argument which could have been brought forward in his favour, while the opposite Counsel seems secretly to have felt it necessary to do more than to rely upon a few plain constitutional principles, and the obvious construction and effect of statutes and treaties.

The committee. I dare say, Sir, will recollect that in the accounts of this case given in the public papers, it was stated, that while the argument was going on, Mr Justice Baily could not refrain from observing in reference to the reasoning urged on the part of the Plaintiffs, upon the doctrine of allegiance by birth. "Then all the Americans 'born before the separation, taking up arms against us in case of war, would be traitors,'—which I advert to merely to show how inadmissible a position appeared to that learned judge, upon the first impression, which must involve so great an absurdity.

The court, however, did not decide immediately after the argument, but took time to deliberate, and afterwards, in the same term the Chief Justice pronounced the judgment of the court, remarking that the case had been ably argued, and that as all the authorities bearing on the question, were cited, they did not think it necessary to refer again to them.

This judgment, Sir, is in itself so important, and it applies so fully and so exclusively to the subject before the committee, that I will read it at length. (Here the Atty. General read the judg-

ment in *Thomas vs. Aclam*, in which after adverting to the facts found by the verdict, the Chief Justice says: "James Ludlow, the father of Frances Mary, "was undoubtedly born a subject of the crown of "Great Britain; he was born in a part of America "which was, at the time of his birth, a British Colony and parcel of the dominions of the crown of "Great Britain; but upon the facts found, we are of "opinion, that he was not a subject of the crown "of Great Britain at the time of the birth of his "daughter"—and after examining the several arguments which had been advanced, and remarking upon the several treaties and their legal effect, the Chief Justice concludes, "For the reasons already given we are of opinion, that James Ludlow "had ceased to be a subject of the crown of Great "Britain, and became an alien thereto before the "birth of his daughter, and consequently that she is "also an alien, and incapable of inheriting land in "England; and judgment must be entered for the "defendant."

Now, Sir, upon this judgment I beg to remark, that the case, so far as the facts are considered, was much stronger in favor of the American claimant than that to which I have already alluded as discussed in this house in the year 1822, and that they are, in truth, more favorable than could be advanced in a vast number of instances in this Province. It is not stated, Sir, that James Ludlow took any active part during the revolution, or that he had abjured allegiance to Great Britain at any subsequent period, or that he had held any place of trust under the Republican Government. It is worthy of remark too, Sir, that Mr. Ludlow was

a member of a family that were generally noted for their loyalty to the Crown during the contest. His brother, I think, after great sacrifices of property withdrew to New Brunswick upon the peace, and was made Chief Justice of that Colony. The family was connected with American loyalists, of distinction; and it will be found in the histories of that period, that the Ludlows are enumerated among those who had made the greatest exertions in the Royal cause, and who suffered most severely by the event. There is nothing in the case to lead us to any other conclusion than that this individual of the family, either because he happened to reside in a part of the revolted colonies where political animosities were not very violent, or because he possessed a property, which he was unwilling to sacrifice to his principles, preferred remaining a quiet spectator of the contest, and after its conclusion found it most convenient to continue to reside where he had been brought up, and to become tacitly, at all events, a citizen and subject of the new Government.

I need not remark, Sir, how much less room there would have been for argument or doubt, if it could have been proved in his case, as in the case of the member returned to serve for the counties of Lenox and Addington, that he had abjured solemnly, and for ever, all allegiance to the British Crown, and had held office under the government of the Republic, and I cannot help observing how entirely conclusive a decision so clear and so positive as this decision of the court of King's Bench, must have been, if it could have been cited on that occasion. The majority of the

assembly, who differed from me and from many other members of the house in the course of that discussion, contented themselves with declaring, that no judicial decision could be produced to show that an American, born before 1783, could ever be regarded as an Alien; and they contended, that he must necessarily continue to be a British subject under every change of circumstance. Now, Sir, every position advanced in support of such a doctrine is distinctly negatived by this solemn and unanimous judgment of the King's Bench in England, a tribunal which must have been as free from bias either from prejudice or interest, as it is entitled to respect from its dignity and learning.—We were told at that time, Sir, that a man being a subject could not divest himself of his allegiance. We answered, that he might be divested of it by the supreme power of the state to which he belonged, concurring with his own consent; a doctrine expressly laid down by Mr. Justice Blackstone, and plainly recognized by this decision, in which the court say Mr. Ludlow *was born* a British subject; but he *is not now* a British subject—that “he was absolved from his allegiance by treaty made under the authority of Parliament, and abundantly recognized and sanctioned afterwards by the same authority.”

Again, Sir, we were told, that the children and grand-children of Americans, born before the year 1783, must, as the children and grand children of British Subjects, be themselves British Subjects under the Statute of Anne and subsequent acts. But the court here say, as many members of the house held on that occasion, that this does by no

means follow—they declared, on the contrary, that James Ludlow, though born a British subject, was an Alien at the time of the birth of his child—that the child was, therefore, the child of an Alien, born in a foreign country, and was herself an Alien.

But, Sir, it is needless to detain the committee with reasoning upon this case. Nothing can be expressed in more distinct and decided terms than the judgment of the court, and nothing is more clear than that judgment, so far as the authority of the tribunal goes, disposes directly and unequivocally of the very points which have been hitherto the subject of doubt and discussion here.

I have now, so far as my recollection, and my knowledge of facts have enabled me, endeavored to lay before the committee the whole case as it respects those persons in this province, who have emigrated from the U. S. of America, and who are infinitely the most numerous class of persons contemplated by the provisions of the bill now before us. The other inhabitants of this country whom it is intended also to relieve, consist principally of persons who many years ago emigrated from different parts of Germany, and of the disbanded soldiers of certain foreign Regiments, which had been employed in His Majesty's service. These are generally settled upon lands granted to them by the Crown, and have equally with the Americans, been suffered to enjoy every right, and exercise every privilege of subjects; but, in truth, as they were born in foreign Countries, of alien parents, and are not within the terms of any of those Statutes, which confer the rights of British Subjects

on persons who have served His Majesty in certain Foreign corps which are specified by name, and as they have never been naturalized by complying with the provisions of the 13 Geo. 2d. they clearly require a legislative enactment to confer upon them those rights, which it was doubtless intended they should enjoy.

With respect, Sir, to our settlers from the United States, we can no longer, in justice to them, shut our eyes to the truth, that many of them, at least, are subject to legal disabilities, which as it is intended that they should be placed on the same footing as the other inhabitants of the Province, it is necessary to remove by some positive legislative enactment. We need but compare the facts as they regarded the case of Mr. Ludlow, with those which affect the political situation of many hundreds, and I may, indeed, say thousands who are now in this province, to be convinced of that necessity. Much, Sir, has been said, as I have already remarked to the committee, upon the subject of supposed invitations by the government but if arguments of that kind could be urged with truth, and if they could be allowed to have that effect in determining the legal question which it is too plain they cannot have, still I would ask this committee, whether it is not most evident, that with respect to many persons now in this Province their application must altogether fail?

It is well known to us all, that among those Americans, who have resorted to this Province, both before and since the war, there are numbers who came hither upon the exigency of the moment,

without the intention of becoming settlers, who neither took any oaths to our government, nor reported their intention to reside here, nor received, nor applied for lands, nor, in short, complied with any one provision of any act of Parliament—men of whose arrival upon our soil, the government was at the time, and is, at this moment, as entirely unconscious, as they themselves were of the existence even of those Statutes, or those Proclamations by which, it has been stated, they were induced to come among us.

It is notorious, that among them there are some who fled from their creditors, some who came here to shake off their domestic connections, and not a few, Sir, I believe in one particular section of the Province, who deserted their masters, and came here to seek the greatest of all blessings—freedom. Surely, Sir, it will not be said, that these came here as settlers under any proclamation, or any British Statute ; but while I enumerate them, I beg it may not be understood, that I am for drawing any distinction in our conduct towards them. On the contrary, I am not for making any exception, and I concur fully in the opinion expressed in the message, that such a discrimination is not necessary. It could not be attempted Sir, without the danger of doing injustice, and I am happy to believe that there is no reason for desiring it.

It is well known, Sir, to many hon. gentlemen now in this house, that this was my opinion on a former occasion, and that I exerted myself to impress it upon the house. I allude, Sir, to the

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session of 1824, in which the hon. member from Leeds, (Mr. C. Jones) introduced a series of resolutions, of which the object was to procure an address to the Throne for removing those civil disabilities, under which a considerable portion of our population was supposed to labor; and I cannot recur to this matter without confessing that I think my hon. friend had some cause to complain of the course which I adopted on that occasion. He, Sir, represented then as he does now, a part of the country in which many respectable people reside, who desired for their own sakes, that their property, and civil rights might be secured to them, and whom he was naturally and properly anxious to serve by the resolutions which he proposed to the house. It appeared to me that in the resolutions which he had offered, the case was not so explicitly stated as to lay the whole matter clearly before the King's government, and at his request, I framed a series of resolutions in amendment, which referred particularly to the several Statutes bearing upon the question, and which were intended, at once, to point out fully the difficulties and doubts which presented themselves, and the remedy which it might be necessary to apply. My opinions, Sir, and my feelings, concurred fully with those of the mover of those resolutions; and it was my object, as much as it was his to procure by them an enactment, that would set at rest every doubt and secure every civil right.—But when the resolutions were introduced, it did appear to me, that the suspicions of some hon. members were excited lest under the pretence of conferring a benefit, some mischief might be intended; and at all events, something was said which

gave me reason to believe that my desire to promote the measure, was thought to indicate a design on the part of the government different from the object which had been avowed. I confess, that on discovering this, conscious as I was that my voluntary assistance in the measure had been purely accidental, that it had no connection whatever with the measures of government, and that I deserved the thanks of those persons for whose relief the measure was intended, and of all who were really their friends, I was influenced by a feeling of indignation to which, perhaps, I ought to have been superior, and in order to show how groundless were such base suspicions, I declared, that as my only object had been to render the application effectual, if made at all, I had no desire whatever to press the measure itself if a majority of those who represented the people, thought it better to decline it; and that if any gentleman would move for the committee to rise, I would not oppose it. The motion was made, and the resolutions were rejected, though I have little doubt if they had been left in the hands of the hon. member for Leeds, they would have been adopted; therefore, the result of my interference, however well intended, might have been with reason complained of, if it had been deliberately produced, instead of arising from a feeling, which I think was not very unaccountable, under the circumstances I have mentioned.

We now see, Sir, that, notwithstanding these various proceedings in the Assembly, the government of this Province persevered in their endeavours, to obtain by their own representations to the

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King's government, the relief which the Assembly had formerly declared to be so necessary . and it is obvious, that they desired and hoped to obtain an enactment of the Imperial Parliament, which should effectually remove every doubt, and obviate every difficulty before the evils apprehended should be actually experienced.—The former discussions of this question had arisen from causes, which it was evident the government could not prevent or control ; but while they had no part in those discussions, they were desirous of quieting effectually the apprehensions to which they might lead, by soliciting silently from his Majesty's government, the necessary remedy. We find, Sir, in the message before us, and in the copy of the despatch of Earl Bathurst which has been since communicated to us, the effect of His Excellency's intercession. It is evident from his Lordship's despatch, that His Excellency had solicited and hoped for an enactment of the Imperial Parliament ; for His Lordship expresses his regret that the particular representation to which the despatch is a reply, had arrived at a period of the session too late to admit of any measure being proposed to Parliament. His Lordship, however, fully concurs in the recommendation that all persons, now in the Province, shall be admitted to the civil rights of subjects, with no other qualifications than we have ourselves thought it expedient to provide with respect to all persons coming hither from foreign Countries. This very gracious declaration of the King's government and His Excellency's message entirely in the same spirit, have been communicated to both houses of this Legislature, and the bill, Sir, now upon the table is the result of the consider-

ation, which the Legislative Council has given to these communications. The step which remains to be taken rests with us. We now know by an open and explicit declaration, the sentiments both of His Majesty's government and of the government of this Province.

The measure which the Legislative Council will agree to, or rather which they *have* agreed to, appears in the bill they have sent down to us; and therefore, whatever sensations this question may excite, or has excited, the whole measure of responsibility, as to its decision, now rests with us.

It is certainly, Sir, a heavy responsibility, if by declining to do our part, the properties and civil rights of a large portion of the inhabitants of Upper Canada, shall be left unnecessarily exposed to danger. For my own part, the feeling which most strongly impresses itself upon me personally, is an anxious desire, that the part which I shall individually take as a member of this committee, shall be, in all respects correct; and I am, I confess, most anxious on every public consideration, that the decision which we shall actually come to, shall be beyond question the most proper.

It is evident that the first point we are called upon to decide, is, whether the different classes of persons mentioned in the preamble of the bill, do, in fact, stand in need of a legislative enactment to confirm them in their possessions and to give them all the rights of British subjects. It is impossible, Sir, for me to be in doubt on this head. If before any such solemn judicial decision had been

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made as I have now read to the committee, I have on a former occasion declared as a judge, and on oath, my conviction that that change has taken place in the political condition of the citizens of the United States of America, formerly British colonies, which places them on the same ground as other foreigners with respect to the British Crown, it is hardly necessary to say, that that conviction is now confirmed beyond a doubt by seeing every principle upon which I founded it, expressly recognized, and sanctioned by a tribunal of the highest legal authority. I cannot, Sir, and I do not doubt, in the face of that decision, that there are, at this moment, in this Province, many persons from the United States of America, whom we have hitherto dealt with as fellow subjects, who have been allowed to exercise every right of subjects, and whom we all wish to see in the full and secure enjoyment of those rights; but, who nevertheless, whenever a question shall arise in a court of Justice respecting their rights, as natural born British subjects, must be declared by that court to be not legally entitled to them. This is a consequence which I would wish to avert. I have made up my mind as to the safety and expediency of granting relief to the full extent; and I have as little doubt that this can be only done by a positive enactment.

Then, Sir, the question which presents itself next in order, is, whether the bill sent down to us from the Legislative council, will fully answer the purpose; and, if not, whether we ought to concur in it or adopt any other course of proceeding — This, Sir, involves considerations respecting which

I am desirous not to be misunderstood ; and as the best means of avoiding it, I shall state my opinions openly and without reserve, and shall be happy during the discussion to afford any further explanation of my sentiments that may be desired : for the question is certainly not without difficulty.

In the first place, Sir, the bill is evidently intended to confer every civil right of subjects ; there is an inaccuracy in the wording of the first enacting clause, which in the course of the discussion, I will point out, and which, if not corrected, might leave room for a construction that would confine the enactment merely to the confirmation of the right to hold real estate ; but whether that is a mere clerical error, or whether it has crept in in consequence of an impression at one time adopted by the council, that their enactment could legally go no farther, and of an omission to alter that part of the bill after that impression had been abandoned, as it evidently has been, it is very clear to me, Sir, that the Legislative Council intended their bill to include the grant of every civil right of British subjects ; otherwise the preamble of the bill and the title of it, and the proviso it contains for preserving our own Statutes respecting sitting and voting in the assembly, would be altogether inconsistent with the enactments. At all events, Sir, we can remove every doubt by an amendment, a few words will effect it, and I take occasion to say thus early in the discussion, that I am for excepting no privilege, and I am ready to concur in any measure, which a majority of this Committee shall think most advisable for obtaining all.

But assuming as I do, that beyond a doubt the Legislative council intended to grant the necessary relief in full; and remembering that we can supply by an amendment what I think is an omission, we have still to ask ourselves whether this Legislature has *power* to pass an act which shall confer within the colony at least, every right of a natural born subject. I will state, Sir, fairly what I think on that point. We know that we derive our legislative powers from the Statute 31 Geo. 3, which gave us the constitution we are acting under. We know also, that that Statute does not restrain us from passing acts of naturalization that shall have effect within the Province, although there is among the general Royal Instructions which regard legislation, (and which as they must govern the King's representative in assenting to or dissenting from the bills which may be passed, have been always communicated to the assembly for their information)—an injunction not to assent to any bill for naturalization, and this restriction would necessarily prevent His Excellency from giving effect to any enactment of ours for such an object, if he had not been relieved from it, in this particular case, by a special Royal instruction for that purpose.

The question therefore is purely a legal and constitutional one. I have no doubt that we may pass an act conferring on an alien, the right to hold lands and to hold office with perhaps some exceptions, and qualifying him to sit on juries, and to exercise generally the rights of a natural born subject; but there are particular privileges upon which the highest value would be placed that stand

upon a different ground. The 31st of the late King, Sir, provides that no person shall sit in the Assembly of this Province, or shall vote in the election of a member, who is not a British Subject by birth, or by conquest and cession of Canada, or a *subject naturalized by act of the British Parliament*. If, therefore, a person naturalized by our act, and not by act of the British Parliament, can neither vote, nor sit in the Assembly, is it proper that we should pass an act professing to grant rights, that, in fact, we cannot grant? This, Sir, I confess is the only point on which I am doubtful, I mean as to the question of what is most expedient under very peculiar circumstances. I know that without any Royal instruction, without any recommendation, we have been in the habit, for years, of passing acts as clearly repugnant to the 31 Geo. 3, particularly in matters of trade; that these acts have not been disallowed but acquiesced in, and at length after being acted upon for years, have been recognized in enactments of the Imperial Parliament. I know too, that I have in vain called the attention of the house to this repugnancy while such acts, as I have spoken of, were passing; and I know, Sir, further, that within half an hour of entering upon this discussion we have sent up a bill to the Legislative Council as clearly in violation of the 31 Geo. 3, as any provision in the bill before us can possibly be. I mean the bill for enabling different classes of dissenters to hold office.—The 31 Geo. 3, declares, that no person shall sit in the assembly without taking a certain oath; one avowed object of the bill we have passed this morning, is, to allow persons to sit in the Assembly

who *will not* take that oath, and to accept of their declaration instead. Our right to pass such an act was discussed in this session and in the last, but we all know, Sir, how vain would have been any attempt to oppose the Bill here upon that ground.

I state these circumstances, Sir, merely to remind the committee of the acts which this assembly has passed without even the inducement or sanction of a Royal message ; but I do not by any means go the length of asserting, that if a question had been raised in our Courts upon any of the enactments I speak of, they would not have been declared invalid, so far as they were in opposition to the British Statute.

And, Sir, I beg it may be understood that if I am asked, as a Lawyer, my opinion whether this bill passed even with the Royal instruction recited in it, would confer the particular right, which I am now speaking of. I must candidly declare, that I am of opinion that it would not, and so I must equally declare of many enactments which have passed this assembly heretofore, and of the very bill, which we have sent from our house this morning.

The question then, Sir, naturally presents itself, ought we, as a legislative body, to attempt any thing which we cannot legally effect ? I feel this difficulty in its full force. I know it is a good and a safe rule to do right *always*, and at all hazards; and if upon this principle, the committee shall reject the provision of the bill to which I am now

alluding, upon the conviction that they ought not, and cannot, under any circumstances consent to an enactment which appears at variance with our constitution, I shall think, Sir, that a most valuable precedent has been established to govern us on all similar occasions. But, at the same time, I own that there are circumstances in the case now before us so peculiar, that although, as I shall soon shew the committee, I am by no means anxiously set upon the present course, I can yet bring myself to vote for the bill which has been sent down, provided it be so amended as to leave no doubt of its extent; and as I cannot but think it very desirable that a majority of this committee should come to the same conclusion, I will explicitly state my reasons. The legislative council have shown their disposition to go the full length of His Majesty's recommendation in conferring every civil right upon the persons who are the objects of this bill. We have the best grounds for supposing that a bill in those general terms, will not be dissented from by His Excellency, because the despatch, of which a copy has been communicated to us, authorises the giving the royal assent to it, unless it shall pass in such a shape as shall make His Excellency doubtful of its expediency. Now, Sir, his Lordship declares his conviction of the *expediency* of conferring *all* civil rights: and the only meaning of the restriction, therefore, I take to be, that, if the bill were passed embracing other objects than those intended; as, for instance, if it extended to foreigners who might hereafter arrive here, or if it dispensed with the 7 years residence required by our own acts, before persons coming from foreign countries could vote, or sit in Parlia-

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ment, such deviation from the terms of the instruction might make it proper in His Excellency to withhold the Royal assent.

I do not therefore, think we are authorised to conclude, that if a bill in terms which correspond with the message shall be passed by us, it will be rejected by His Excellency. To be sure that discretion is vested in the Lieutenant Governor, and he must be allowed to exercise it, at the last moment, according to his judgment. But we find, Sir, that in the 31st of the late King, sec. 30. the direction giving respecting the giving or withholding the Royal assent to bills passed in this Province provides that when a bill shall be presented to the Lieutenant Governor, he shall either assent to it, or withhold his assent, or reserve it for the signification of His Majesty's pleasure, according to his discretion, subject, however, to the provisions contained in that act. *and to such particular instructions as he shall from time to time, receive from His Majesty.*

We are therefore warranted in supposing that His Excellency, under the particular instruction which has been received in this case, will think himself relieved from responsibility in suffering such an enactment to receive the Royal assent, being well assured, that the intention of His Majesty's government will be called to a full consideration of the provisions of the act, and that there is a power to disallow it within two years if it be thought exceptionable.

If an act, such as we can all approve of, be

sent to England, it will, at least, from the moment of its passing, set at rest every difficulty respecting the title to real property, and obviate other inconveniences to which many persons are now exposed; and with respect to those rights connected with the Legislature, if it be ineffectual in conferring them, as I must say I think it would be, the persons claiming those rights would only remain subject to the same doubts as at present.

In the desire to confer them, all are agreed, the bill would profess to do no more than His Majesty's Government have expressed their approbation of; and, if the King's government should feel it necessary to disallow the bill, we can only imagine that they would do so with the determination of supplying all that was desired, by an act of the Imperial Parliament. In that case they will have the advantage of seeing by this bill, what provisions the Legislature of this country desires, and will have the most certain information of the difficulties felt or apprehended and the particular remedy which it is thought proper to apply to them.

But, Sir, I have no intention to press this bill, if it is against the sense of the committee, and I will proceed to state, that there is another course which must readily suggest itself to us all, and which deserves consideration. May we not pass the bill in such a shape as will confer all other rights of British subjects, except those which are especially mentioned in the 31st of the King? This we are competent to do of course, and the question is therefore merely one of expediency.

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In favor of such a course it may be stated, that by such an act we do promptly every thing we can in favor of the persons whom we are desirous to protect, that we at once provide a remedy so far as we are able, and that His Majesty's government cannot fail at our intercession, to do the rest with the least possible delay. Against it it may be urged, that by conferring those rights which it is in our power to confer, we declare, beyond doubt, our judgment as to those disabilities which we cannot remove, and that we shall create apprehension, and may produce inconvenience, by calling attention to the evil before we are prepared to administer the remedy.

Undoubtedly, Sir, all this it is our duty to consider, the choice of measures is here before us ;—and, as the representatives of the people, we are called upon to decide which is the most proper and effectual course. My mind, I repeat is made up—I would concur in passing this bill under the very particular circumstances which are expressly recited in the preamble, in the conviction that it can do no harm, and that it may lead the most readily to the result we all wish for. But, I am so far from being obstinate in this opinion, that if the committee generally think it better to pass no bill, but to unite rather with the Legislative Council in an address to the Governor, soliciting His Excellency's further intercession with His Majesty's government for an Imperial act in conformity with Lord Bathurst's despatch, I will most readily and cheerfully concur in that course, and give any assistance in my power in promoting it. I have, indeed, Sir, already considered this alternative; and

I drew up last evening, (but very hastily) a series of resolutions similar to those offered in 1824, which I will read now to the committee, that they may have the subject before them in every point of view, at this early stage of the discussion, and be the better able to decide upon the preferable course.

[Here the Attorney General read the resolutions which are published below.]

I think, Sir, if the committee determine that they cannot pass the bill in its present shape, and if they deem it unwise to give relief partially, looking to the Imperial Parliament to supply what is wanting, that then these resolutions, or something like these, will sufficiently explain the reasons of our conduct, and represent what it is that we desire. For my own part, I repeat, that I would go with the committee in either course, though for the reasons I have stated, I prefer the first. They have all in view the same object; and, whatever we may decide, it must be evident to all the inhabitants of this province, who are interested in this measure, that they are exposed to no danger from which the government and the Legislative Council, are not as anxious as we can be to protect them.

In truth, the whole measure now rests with us, and I hope and trust we shall dispose of it in the most proper manner.

I fear, Sir, that in my anxiety, to submit the whole matter at once to the view of the committee, I may in some measure have obscured it; but I

have studiously endeavored to avoid prejudicing the discussion by the introduction of any topic not bearing strictly upon the question. I am very sensible that I must have appeared to trespass unreasonably upon the time and patience of the committee; but I hope it may not be necessary for me to trouble them again upon the question; and I certainly shall feel no desire to do so, unless it be for the purpose of explaining any misapprehension of my arguments, or of correcting any erroneous statements of facts which may be advanced.

[Resolutions read by the Attorney General, as those he might offer for adoption, if the Committee should prefer the course of addressing the King.]

Resolved, That a very considerable portion of the population of this province, consists of persons who have come from the United States of America, since the acknowledgment of the independence of those States by treaty in the year 1783.

Resolved, That of these persons many who were born before the year 1783, had adhered to the British crown during the contest which preceded, and had, of course, preserved with their allegiance, their character of British subjects. That there were others, who, having from their tender years, or other cause, taken no active part in the said contest, remained in the said United States after its conclusion, but who neither by abjuring allegiance to the British crown, nor in any other manner, unless by a continued residence in the said U. States after they had arrived at man's estate, manifested their election to become subjects thereof.

And that among those who have so removed into thi province, there were also some, who during the said contest were actively opposed to His Majesty's arms, or who since its termination and before their removal into this province, had, either by oaths, or acceptance of office, or otherwise unequivocally declared themselves to be subjects of the government of the said United States.

Resolved. That among those who have removed into this province from the United States of America, there are also many who were born in said States, since the acknowledgment of their independence, of parents who came within some one of the descriptions of persons mentioned in the foregoing resolution.

Resolved, That a great, proportion of those persons became settled in this province with the sanction of the government, and have received grants of land therein from the crown; and others have become possessed of real estate, which they claim to hold by purchase, or inheritance.

Resolved, That there are likewise in this province, many persons born in other Foreign countries, who have also received grants of land from his Majesty, or become otherwise possessed of real estate.

Resolved, That of these different descriptions of persons such as were Aliens at the time of their coming into this Province, and might have become entitled to the privileges of British subjects by observing all the provisions of the statutes of Great

Britain, made for naturalizing Foreign protestants in his Majesty's colonies and plantations, have nevertheless omitted to avail themselves of such provisions, by reason whereof their rights and privileges as subjects, which they have been hitherto allowed to exercise and enjoy, are liable to be impeached unless relief is afforded by legislative enactment.

Resolved, That this house receives from his Excellency, the Lieutenant Governor, with much satisfaction, the assurance, that in the opinion of his Majesty's government, it will be advisable to confer by a legislative enactment, as his Excellency has been graciously pleased to recommend, the civil rights and privileges of British Subjects upon such citizens of the United States of America, and natives of other Foreign countries resident in Upper Canada, as are in truth Aliens, although they have hitherto enjoyed without question the rights of subjects.

Resolved. That it appears to this house, that although the gracious intentions of His Majesty & of the Government of this Province, are sufficiently evident, and cannot but be, in the highest degree, satisfactory to the people of Upper Canada, it may nevertheless be doubted, whether those civil rights which regard the capacity of voting in the election of Members of the Assembly of this Province, or of holding a seat in either house of the Legislature, can be conferred, so as not to be liable to question, otherwise than by an act of the Imperial Parliament.

Resolved, That this house are, on that account disposed humbly to supplicate His Majesty to refer to his Imperial Parliament, and to that end, to pray that his Excellency the Lieutenant Governor will again solicit his Majesty's gracious recommendation to his parliament. to confer, at the same time, upon such inhabitants of the province as are affected by the foregoing resolutions, all those other rights, and privileges which his Majesty's natural born subjects of this province enjoy.

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